

LIBRARY
SUPREME COURT, U.S.

FILED

APR 2 1957

JOHN T. FEY, Clerk

No. ~~510~~ 43

In the Supreme Court of the United States

OCTOBER TERM, 1956

STEFENA BROWN, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT**

REPRINT OF FULL OPINION OF THE DISTRICT COURT

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 570

STEFENA BROWN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

REPRINT OF FULL OPINION OF THE DISTRICT COURT

The opinion of the district court, as it appears at pages 38-40 of the printed record, does not constitute the complete opinion of the district court but only that portion thereof in which the district court disposed of the issue of contempt of court. Since we believe that the complete opinion of the district court should be available to this Court, we reprint that opinion in full in the pages which follow.

J. LEE RANKIN,
Solicitor General.

UNITED STATES OF AMERICA IN THE DIS-
TRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

No. 12,628

UNITED STATES OF AMERICA

vs.

STEFANA BROWN

At a session of said court, held in the Federal Build-
ing, Detroit, Michigan, February 18, 1955.

Present: Honorable Ralph M. Freeman, District
Judge, Presiding.

APPEARANCES:

Dwight K. Hamborsky, Assistant United States At-
torney, appearing on behalf of The United States.

Harold Norris, attorney for the Defendant.

OPINION OF THE COURT

The COURT: This is a suit filed by the United States of
America against Stefana Brown to cancel her citizen-
ship. It is undisputed that the defendant was an alien
and a citizen of Poland prior to November 25, 1946. It
is also undisputed that she entered the United States on
December 26, 1912, at which time she was approxi-
mately two years of age and a citizen of Poland.

The defendant filed an application for a certificate of
arrival, and a preliminary form for petition for natu-
ralization on July 16, 1946, or at least there has been dis-

played an application bearing that date, which was, I believe, received and filed with the Immigration and Naturalization Service.

Mr. HAMBORSKY: The one in the middle is the first filing there. I think that was July 18, your Honor, in the middle there. (Indicating.)

The COURT: That was the first filing?

Mr. HAMBORSKY: Yes.

The COURT: She filed her petition for naturalization. I do not know when; I cannot tell from looking at it.

Mr. HAMBORSKY: That would be the same date. That is typed up right on it, in regard to the preliminary form.

The COURT: July 16, 1946. That indicates that her petition for naturalization was filed in the United States District Court for this District on August 22, 1946, is that correct?

Mr. HAMBORSKY: That would be the final petition, Exhibit 2.

The COURT: In any event, she was naturalized in the United States District Court for the Eastern District of Michigan on November 25, 1946.

It is the claim of the Government in this case that the defendant procured her naturalization illegally and by fraud, in that the defendant was a member of the Communist Party of the United States at some time during a period of ten years prior to the time that her petition for naturalization was filed.

It is the claim of the Government that it was some time during a ten-year period preceding the time she became naturalized?

Mr. HAMBORSKY: No, the filing.

The COURT: The filing?

Mr. HAMBORSKY: Yes.

The COURT: That is what I thought.

Mr. HAMBORSKY: July 16, 1946.

The COURT: It is also the claim of the Government that in filing her petition she was untruthful in answering certain questions, particularly question number 28, wherein she was asked whether or not she was a believer in anarchy, or the unlawful damage, injury or destruction of property, or sabotage, to which question she gave the answer, "No"; and also that she was untruthful in answering "No" to the question as to whether or not she belonged to or whether she was associated with any organization which teaches or advocates anarchy or overthrow of existing government in this country.

The Government also contends that the Naturalization Department asked her, at the time she presented herself for examination, whether or not she was a member of the Communist Party at any time, to which she answered "No".

It is the claim of the Government that the defendant exercised fraud in procuring her naturalization by answering three questions untruthfully, with respect to whether or not she was a member of the Communist Party, and concealed that fact from the Examiner.

It is the claim of the defendant in this case that she did not illegally or fraudulently in either respect procure her citizenship by naturalization.

The Government has introduced testimony here to the effect that the defendant was a member of the Communist Party during the year 1936 and subsequent thereto. As I recall it, the testimony of one witness indicated that she was a member of the Communist Party as late as 1951. The Government witnesses also testified that the defendant attended a number of closed meetings

of the Communist Party from time to time, and also that only members of the Communist Party in good standing could attend closed meetings. The testimony of Government witnesses was also to the effect that she was also active in the affairs of the Communist Party in the distribution of Communist literature and otherwise.

It is the claim of the Government that she joined what was known as the Young Communist League, I think in the year 1930 or thereabouts, and that she continued to be a member of the Young Communist League until the early part of 1935, at which time she discontinued her membership in that League, and that her husband at that time was notified that his membership in the Communist Party was terminated.

The defendant has also testified that she was active in the affairs of the Young Communist League during that period of time because of the economic depression of the early 1930's, and that she was active in that respect because of her desire to help the underprivileged people.

The Court has given careful attention to all the testimony in this case. He has weighed the testimony carefully and has evaluated it. The Court, in reaching the conclusions and the findings which will be announced, has not given any consideration whatever to the testimony elicited from the defendant with respect to the activities of her husband, which testimony the Court has, I think, already stricken from the record.

The Court finds that the defendant was a member of the Communist Party during a substantial part, if not all, of the ten-year period prior to the filing of her petition for naturalization.

The Court finds that among the aims and objectives of the Communist Party during that time was to over-

throw the Government of the United States by force and violence.

It is undisputed that the defendant was a member of the Young Communist League until the early part of 1935, which the Court believes to be the youth section of the Communist Party; and that upon attaining the age of 25 the defendant thereupon became a member of the Communist Party and was active in the affairs of the Communist Party.

The Court finds that the defendant attended many closed meetings of the Communist Party at which only members of the Communist Party in good standing could attend. I also find that the defendant was active in handling certain literature printed and distributed by the Communist Party, which literature was subversive and which also advocated the overthrow of the Government of the United States by force and violence. I find that the defendant wilfully, knowingly and understandingly prepared or assisted in the preparation of her petitions for naturalization, Exhibits 1 and 2 in this case; that she understood the contents thereof and submitted such petitions and exhibits to the Naturalization Office.

I find that the then Naturalization Examiner, Mr. Austin, I think his name was, did ask the defendant, during his examination of her, whether or not she had ever been a member of the Communist Party, and that she at that time answered "No".

I also find that at that time, or at least within ten years prior to the time she filed her petition, that she had been a member of the Communist Party.

I find that the defendant concealed the fact of her membership in the Communist Party from the Naturalization Service and the Examiner, in connection with

her application for naturalization, and that she misinterpreted that fact to the Naturalization authorities.

It is, therefore, the conclusion of this Court that the defendant procured her naturalization on November 25, 1946, illegally, in that she had been a member of the Communist Party for some period of time during the ten-year period immediately preceding the filing of her petition for naturalization.

I also conclude that, due to the fact that the defendant misrepresented to the Government and concealed from the Government the fact that she had been a member of the Communist Party during the ten-year period, or any part of that time, that she was therefore not of good moral character, not attached to the principles of the Constitution, and not well disposed to the good order and happiness of the United States.

I also conclude, as a matter of law, from the evidence in this case, that the defendant was naturalized and procured her citizenship fraudulently, in that she did not disclose to the Naturalization Authorities by way of her petition, and also by way of response to questions of the Naturalization Examiner, that she was a member or had been a member of the Communist Party.

The Court is convinced that the defendant did entertain a mental reservation at the time she procured her citizenship that she was renouncing her allegiance to her native land. She did not intend to renounce her allegiance, and she did not honestly and truthfully accept allegiance to the United States.

It is beyond the power of this Court to understand how any person can accept United States citizenship, with all it offers—it is the most priceless thing this

Government can bestow upon any person—and remain attached to the principles of Communism.

The Court is convinced, not only from the testimony in this case, but I think it is so well known now that the Court can take judicial notice of it, that the aims and purposes of Communism are to overthrow the Government of the United States by force and violence. But I am not basing my decision upon that. I am basing my decision and the findings and conclusions I have reached upon the evidence in this case.

Therefore, it is the order of this Court that the order heretofore entered in the naturalization proceedings of the defendant, admitting her to citizenship, be revoked and set aside, and that her certificate of naturalization be cancelled, for the reasons that I have given already; and that her certificate of naturalization be delivered and surrendered to the Clerk of this Court, and to be transmitted by him to the Commissioner of Immigration and Naturalization at Washington, D. C., and that a certified copy of this order go to the Commissioner of Immigration and Naturalization in Washington, and that the defendant be forever restrained and enjoined from claiming any right, privilege, benefit, or advantage whatsoever under this certificate of naturalization.

In making the findings I have just made, and the conclusions reached in this case, I have in mind that the rule and the test is that the Court should be convinced by clear and unequivocal testimony, by clear, unequivocal and convincing evidence, that the defendant did procure her citizenship illegally and fraudulently. I have applied that rule to my thinking in this case and to the findings and conclusions reached.

An order may be prepared in accordance with this

decision and opinion of the Court, and presented to the Court.

I have one other matter to dispose of. This morning the defendant refused to answer certain questions submitted or propounded to her by the Government. She refused to answer, claiming her privilege not to do so by reason of the Fifth Amendment. At that time I cautioned the witness and explained to her that she was required to answer; that she had waived the benefit of the Fifth Amendment, she had waived the right to claim any privileges under the Fifth Amendment, by reason of having testified as a witness in her own behalf.

After I held the defendant in contempt of court a number of other questions were propounded, and to those questions the defendant also refused to answer, relying on the Fifth Amendment, her right not to testify by reason of the protection afforded her by the Fifth Amendment.

I repeat again, and I find again that the defendant is in contempt of this Court for refusing to answer the questions that the Court directed her to answer. In this connection I will now dictate upon the record an order which the Court feels is necessary under the rules of this Court. This order is to be transcribed and presented to the Court for signature, and to be entered of record.

In this case the defendant was called to the witness stand as the Government's first witness, under the court rule; and during her examination the defendant refused to answer certain questions propounded to her by the District Attorney, claiming her privilege not to answer by reason of the Fifth Amendment, and the Court allowed her to claim that privilege. At the close

of her examination as a Government witness under the court rule, she was submitted for cross-examination by her own counsel, who stated at that time as follows:

"If your Honor please, this is all examination under the statute, and I want to reserve the right to go into the matter with this witness. I won't cross-examine the witness at this point. I will put her on direct."

"The Court: All right. That is all."

When the Government rested its case, defendant's counsel, Mr. Norris, stated as follows:

"I would like to call Mrs. Stefania Brown.

The Court: All right. The record may show that Mrs. Brown has been previously sworn as a witness, and has already testified in this case. It will not be necessary to swear her as a witness again.

Mr. Hamborsky: For the purpose of the record, they offer the witness to testify as a defense witness.

The Court: Yes, I think that is right; is it, Mr. Norris?

Mr. Norris: That is right, your Honor.

The Court: You are calling her as your witness?

Mr. Norris: That is right. The plaintiff has rested."

I have quoted there from the transcript of what appears at the close of the Government's examination of the defendant when called as a Government witness, and also what occurred at the close of the Government's case.

The defendant was then examined by her own counsel at length with respect to the subject of this suit, and

at the end of such direct examination the District Attorney asked of the defendant certain relevant and material questions with respect to these proceedings, on a number of which questions the defendant refused to answer, claiming her privilege not to do so by reason of the Fifth Amendment.

The Court directed the defendant to answer the questions, and she refused.

The Court directed that the testimony involved on the cross-examination of this witness by the District Attorney be transcribed and made a part of the record in this case, and this order, so that counsel and any reviewing court may see exactly what occurred and the nature of the questions asked of the defendant.

The Court is of the opinion that the defendant, in taking the stand as a witness in her own behalf, waived the right to exercise her privilege not to answer questions which might tend to incriminate her, by reason of the Fifth Amendment. And, having refused to answer a number of questions asked of her by the District Attorney, and having been directed by the Court to answer the questions, and having refused to answer the questions, the Court finds the defendant is in contempt of this Court.

Of course, this is a contempt that occurred within the presence of the Court.

Having found the defendant in contempt of Court, the Court, therefore, shall impose punishment for such contempt.

It is the sentence of this Court that the defendant be committed to the custody of the Attorney General of the United States for a period of six months, for this contempt of Court.

That is all.

Mr. NORRIS: If your Honor please, may I ask for a stay on that.

The COURT: Just a minute.

Mr. NORRIS: If your Honor please, I should like to ask for a stay on that. I believe there is a substantive question of law involved, as to whether or not, in a civil case, under the circumstances involved in this case, that the defendant did waive rights under the Fifth Amendment. I believe I made that statement when your Honor accorded me an opportunity to make that statement during the proceedings. And because there is a substantive question involving a fundamental right, I would like to take this opportunity, if I may, to ask for a stay of sentence, in order that we might consider the question of appeal on that particular proposition.

The COURT: I want to give you every right to have this question determined by an appellate court.

Mr. NORRIS: At least, I think we would want the opportunity to consider whether or not we will.

I want to state at this time that there is a fundamental question. The state of the law is, in my opinion, if I may say it, not so clear,—though I respect your Honor's ruling, and I, of course, will do all that I can to have it enforced. But I do want to ask this opportunity.

The COURT: I will stay this sentence, so that you may have an opportunity to appeal this matter to the appellate court. How long a stay do you want?

Mr. NORRIS: At least 20 days, if I may.

The COURT: All right, I will give you a stay of 20 days.

Mr. NORRIS: Will the defendant be released to my custody?

The COURT: I beg your pardon?

Mr. NORRIS: Can the defendant be released to me, on a personal bond, to be present for any future proceedings?

The COURT: Has the Government any objection to a personal bond?

Mr. HAMBORSKY: I have no objection to a personal bond, your Honor.

The COURT: All right.

Mr. HAMBORSKY: The only thing is, may I suggest something, that a notice of claim of appeal be filed immediately, within a day or two, so that we can be sure of their position. In other words, if he files a claim 20 days from now——

The COURT: How long do you want? When would you file your claim?

Mr. HAMBORSKY: (Continuing) He would then have 30 days after that to get any pleadings in or briefs.

Mr. NORRIS: If your Honor please, I do believe that is rushing matters quite a bit. This is an extraordinary sentence, under the circumstances, and I do believe an appeal——

The COURT: (I believe an appeal is a very simple act, isn't it?)

Mr. NORRIS: Yes.

Mr. HAMBORSKY: Yes. That is all I want to know. I do not want it to be frivolous.

Mr. NORRIS: We are not treating it as a frivolous matter.

The COURT: You file your claim within five days. If it was an involved act, I would not expect you to do the impossible. But filing a claim of appeal is quite a simple matter, as I understand it.

Mr. HAMBORSKY: It is a simple act. If they decide they do not want to file an appeal, they can withdraw it.

But the claim of appeal is a simple act; it is just filing a paper.

Mr. NORRIS: May we have 10 days on that claim of appeal, your Honor?

The COURT: What is the statutory time, the time provided by the rules for that, do you know?

Mr. HAMBORSKY: Well, it is 30 days after the claim of appeal, that they must submit a brief. But I think that the statutory time on appeal is 60 days. I think it is 60 days that they have to file that, then.

The COURT: Claim of appeal?

Mr. HAMBORSKY: I think it is different in civil cases than it is in criminal cases.

Mr. NORRIS: I do not think I am asking for a great deal, your Honor, to ask for 10 days to decide on a claim of appeal.

The COURT: I will do that. I will give you that. I will give you a stay of this sentence, and I will admit the defendant to bail on \$1000 personal bond, provided claim of appeal in this matter is filed within 10 days. If it is not, the stay will be set aside and the bond cancelled.

Mr. NORRIS: Thank you, your Honor.

(The defendant, Stefana Brown, was sworn to a \$1000 personal bond.)

Mr. HAMBORSKY: If it were a civil contempt, which it is not, that would be 60 days. But in a criminal contempt, it is 10 days.

The COURT: I think it is 10 days. That is what the rule provides, and I gave him that 10 days.

(Which were all of the proceedings had in said cause at said time and place.)

District Judge.

STATE OF MICHIGAN,

County of Wayne, ss:

I, HARRY R. HOWSE, do hereby certify that the foregoing and attached transcript is a full, true and correct transcript of my shorthand notes taken in said cause, at said time and place.

HARRY R. HOWSE,

Official Reporter.

Detroit, Michigan, March 1, 1955.